

REMARKS

Favorable reconsideration of the application is respectfully requested in light of the amendments and remarks herein.

Claims 1-13 were pending in this application. By the present Amendment, Claims 4 and 7 are amended and Claims 14-17 are added.

Office Action was Incomplete

It is submitted, first, that the Office Action of December 24, 2002 was incomplete because it did not address all of Applicants' arguments set forth in the previous Amendment submitted September 27, 2002, contrary to the provisions of the M.P.E.P. (See, e.g., M.P.E.P. 707.07(f).) In particular, on pages 10-11 of that Amendment, it was argued that the Moline patent is non-analogous art to the present invention. Further, on page 11, last paragraph to page 12, it was argued in detail that there is no suggestion to combine the Mouly and Moline references. Neither one of at least these two arguments was acknowledged or addressed in the Office Action. As such, the Office Action was incomplete, and it is respectfully requested that those as well as all other arguments herein be fully considered prior to the issuance of the next Office Action.

The Rejection Under 35 U.S.C. 103(a)

Claims 1-6 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,878,033 ("Mouly") in view of U.S. Patent No. 6,067,566 ("Moline"). Claims 7-13 were rejected under §103 over the Mouly/Moline combination in further view of the Cheng, Boyle or Lindholm patents. Applicants respectfully submit that all claims in this application, at least in the form presented herein, are patentably distinguishable from the cited references for at least the following reasons:

Claim 1, for example, claims the following:

“A method for determining access times of repeatedly broadcast objects in a broadcast channel using a unidirectional communication scheme in order to transmit the broadcast objects from a server side to a receiver side, characterized in that the broadcast object includes a header defining a repetition distance which is the distance between the completed transmission of the broadcast object and its next repetition, and a next reception point in time of said broadcast object is calculated from a current time value and said repetition distance.” (emphasis added)

The Office Action appears to rely on Mouly at col. 4, lines 60-67 & col. 5, lines 1-5 as disclosing the claimed repetition distance which is the distance between the completed transmission and its next repetition. Applicants respectfully disagree. Col. 4, line 60 et seq. of Mouly pertains to Table V (relating to the content of a “schedule message”) and reads as follows:

“The format is the same as that of table III, except that the cue appearing at the field for each broadcast consists either of the category cue if the broadcast is not a repetition of a message already broadcast during the period (second bit =0), or of the sequence number of an earlier broadcast of the message in question during the period if this is a repetition (second bit =1). It will be noted that significance of the first bit of the fields whose second bit has the value 1 may be changed without losing information, since the sequence number which follows makes it possible to fetch from the start of the field corresponding to this number the bit indicating whether the message in question has been broadcast during the preceding schedule period.” (emphasis added)

Applicants submit that the above-quoted material does not pertain to a distance between a completed transmission of a broadcast object and its next repetition. Rather, the passage deals with the issue of whether a currently broadcast message is, or is not, a repetition of a previous broadcast. Accordingly, this passage of Mouly is not relevant to Applicants’ invention.

It is noted that on page 6 of the Office Action (“response to arguments” section) the Examiner again mentioned col. 4, lines 60-67, where a portion of the above-quoted passage was quoted. Applicants reiterate, that Mouly’s “second bit” is merely an indication as to whether or not a current broadcast is a repetition of a previous broadcast. It is not an indication as to

whether or when a future, i.e., “next” broadcast will be a repetition of the current broadcast.

Thus, this portion of Mouly is not pertinent to Applicants’ claims.

Further, the current Office Action now relies on col. 12, lines 44-64 of Mouly for teaching the calculation of a next reception point in time of the broadcast object from a current time value and the repetition distance. Applicants respectfully submit that this passage in Mouly does not teach such a calculation. The cited passage is Mouly’s Claim 5, which recites particulars of a schedule message header and the first and second bits, which are assumed to reference those bits mentioned above in col. 4, line 60 et seq. The first bit’s value indicates whether one of the service messages has been broadcast during the preceding schedule period. The second bit is an indication of whether or not the current broadcast “is a repetition of said one of said service messages already broadcast ...” (emphasis added) (col. 12, lines 46-51). Thus, it is readily apparent that these bits are not relevant to broadcast information of a next broadcast of the same object. That is, they only deal with comparing current broadcast information to past broadcasts.

The Office Action further relies upon Moline for teaching a header defining a repetition distance at col. 17, lines 15-40. The Examiner states that Moline is in the same field of endeavor (as Mouly). Applicants respectfully traverse this position and contend that Moline is non-analogous art as will be explained more fully below. In addition, Moline is not properly combinable with Mouly and therefore the proposed combination is improper, as will be explained:

The Moline Patent is Non-Analogous Art

It is further contended that the Moline reference is non-analogous art to the present invention, and therefore cannot be properly applied to reject Applicants' claims. It is well established that non-analogous art cannot be considered pertinent prior art under 35 U.S.C. 103. *See in re Pagliaro*, 210 USPQ at 892 (CCPA 1981). The determination as to whether a reference is from a nonanalogous art is two fold. First, it must be decided if the reference is within the field of the inventor's endeavor. If it is not, it must be determined whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. *See In re Wood*, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979). In the case of *In re Clay*, 966 F.2d 656, 23 USPQ2d 1058 (Fed.Cir. 1992) the court held:

"A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals logically would have commended itself to an inventor's attention in considering the problem."

In the present case, the Moline patent does not satisfy the above well established test of a reference falling into the category of analogous art. First, Moline is not within the field of the present inventors' endeavor. The present invention relates to a method for determining access times of repeatedly broadcast objects in a broadcast channel using a unidirectional communication scheme. By contrast, Moline relates to distributing live performances on MIDI (Musical Instrument Digital Interface) devices via a non-real-time network protocol, such as the Internet protocol. Evidencing the different fields between the Moline patent and the Mouly patent applied in combination, Moline is classified by the USPTO in U.S. classes 709 and 345; whereas Mouly is classified in classes 370 and 455, defined as follows:

Class 709 (Moline): Electrical computers and digital processing systems: multiple computer of process coordinating.

Class 345 (Moline): Computer graphics processing, operator interface processing, and selective visual display systems.

Class 370 (Mouly): Multiplex communications.

Class 455 (Mouly): Telecommunications.

Accordingly, Moline is neither within the field of the present inventors' endeavor, nor is it within the field of the Mouly reference applied in combination.

Secondly, Moline is not reasonably pertinent to the particular problem with which the inventor was involved, thus failing the second prong of the test. Moline deals with the problems of transmitting a live broadcast in a non-real-time network protocol such as the TCP/IP protocol. On the other hand, the present invention is directed to the problem of determining access times of a repeatedly broadcast object in a broadcast channel using a unidirectional communication scheme. It is clear that the matter with which Moline deals would not logically have commended itself to the present inventors' attention in considering the problem solved by the present invention.

Therefore, as Moline fails both prongs of the analogous art test, Moline is non-analogous art to the present invention and cannot be properly applied in an obviousness analysis.

No Suggestion or Motivation to Combine Mouly and Moline

Moreover, it is well established that when a rejection depends on a combination of references, there must be some teaching, suggestion or motivation to combine the references. *See In re Rouffet*, 149 F.3d 1350, 47 USPQ 2d 1453 (Fed.Cir.1998). To prevent the use of hindsight, the examiner is required to show a motivation to combine the references that create the case of obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would

select the elements from the cited prior art references for combination in the manner claimed. *Id* at 1357. Further, in *Winner Int'l Royalty Corp. v. Wang*, 202 F.3d 1340 (January 27, 2000), *reh'g en banc denied* (March 6, 2000), *cert. denied*, 120 S. Ct. 2679 (U.S. 2000), it was held that:

“Although a reference need not expressly teach that the disclosure contained therein should be combined with another, the showing of combinability, in whatever form, must nevertheless be ‘clear and particular.’” (emphasis added).

It is submitted that the Examiner has not set forth a clear and particular showing of the combinability of Mouly and Moline. Significantly, Mouly relates to a TDMA (time division multiple access) radio network. On the other hand, Moline relates to transmitting a live broadcast over an entirely different protocol, primarily the TCP/IP network protocol. There is no suggestion in Moline (nor has the Examiner indicated a suggestion in any other reference) to utilize Moline's technique in a TDMA system as taught by Mouly. Accordingly, the proposed combination must fail for this additional reason. It is noted that the purported reason to combine the references set forth in the Office Action on page 3, paragraph 8, is illogical, i.e.:

“[Mouly] does not go into details of the data addressing as it is obvious in networking technology in order to send packet to their destination a header is required otherwise it would not be possible to sent them. Thus Mouly-Moline discloses the header information.”

Note that the Mouly system is based on TDMA which is not a packet-switched type system as the Examiner appears to be implying. There are no packets being utilized in the Mouly system. Accordingly, the purported motivation set forth in the Office Action is unfounded.

Conclusion

Accordingly, for the foregoing reasons, independent Claim 1 is not rendered obvious under §103 by the prior art cited by the Examiner. New independent Claim 14 is patentable for at least the same reasons discussed above concerning analogous features of Claim 1.

Claims 2-13 and 15-17 in this application are patentable over the cited references based at least upon their respective dependencies from Claims 1 or 14.

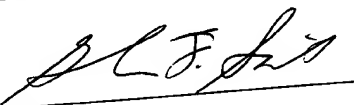
The Cheng , Boyle and Lindholm patents, cited to meet certain features of various dependent claims, do not cure the deficiencies of Mouly and Moline with respect to Claim 1 (or Claim 14). Thus, whether or not these references do disclose features in Claims 2-13 is not dispositive of the patentability of these claims based at least upon their dependencies from Claim 1.

In view of the foregoing, entry of this amendment, and the allowance of this application with Claims 1-17 are respectfully requested.

In the event that additional cooperation in this case may be helpful to complete its prosecution, the Examiner is cordially invited to contact Applicant's representative at the telephone number written below.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP

By:



Glenn F. Savit
Reg. No. 37,437
(212) 588-0800